



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## ***MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION***

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

VISTA HOSPITAL OF DALLAS  
4301 VISTA ROAD  
PASADENA, TX 77504

#### **DWC Claim #:**

**Injured Employee:**

**Date of Injury:**

**Employer Name:**

**Insurance Carrier #:**

#### **Respondent Name**

CITY OF DALLAS

#### **Carrier's Austin Representative Box**

BOX NUMBER 53

#### **MFDR Tracking Number**

M4-07-3218-02

#### **MFDR Date Received**

JANUARY 15, 2007

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary Dated February 7, 2007:** "Carrier may reimburse at a "per diem" rate for the hospital services if the total audited charges for the entire admission are below \$40,000, after the Carrier audits the bill pursuant to the applicable rules. However, if the total audited charges for the entire admission are above \$40,000, the Carrier shall reimburse using the Stop-Loss Methodology in accordance with the plain language of the rule contained in § 134.401(c)(6)(A)(iii). The total audited charges at issue in this matter exceed the Stop Loss Threshold. The rule does not require Vista to provide evidence that the service provided during the admission were unusually extensive or unusually costly to trigger the application of the Stop Loss Methodology. It is presumed that the services provided were unusually extensive or unusually costly when the \$40,000 stop-loss threshold is reached."

**Amount in Dispute:** \$6,995.89

### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary Dated February 6, 2007:** "Harris & Harris represents City of Dallas in this matter. Please direct all future correspondence regarding this Medical Dispute matter to the undersigned at Harris & Harris."

**Response Submitted by:** Robert F. Josey, Harris & Harris Attorneys at Law

**Respondent's Supplemental Position Summary Dated March 1, 2007:** "To invoke the Stop-Loss reimbursement provisions, the Requestor must meet **two** criteria: (1) the audited charges must exceed \$40,000, the minimum stop-loss threshold and (2) the services made the basis of the charges must be unusually extensive/costly. Nowhere in any of the submitted documentation does the Requestor indicate the services were unusually extensive or costly or anything other than routine. As the minimum Stop-Loss Exception threshold was not met, and as the Requestor failed to demonstrate the surgery was unusually costly or extensive, it has failed to meet the two-pronged Stop-Loss criteria and merits no additional monies. The Requestor has, to date, refused to explain how it arrived at the billed amount. The Requestor has not justified its entitlement to further reimbursement, and is therefore not due any further funds."

**Respondent's Supplemental Position Summary Dated September 9, 2011:** "The court held that for Stop-Loss Exception to be applicable, a two-prong analysis must be met. First, the billed services must exceed \$40,000. Second, and most importantly, the services rendered during the admission must be unusually extensive or unusually costly. Providers have long argued that the Stop-Loss Rule applies every time billed services exceed \$40,000 regardless of the procedure performed. However, the court made clear that this interpretation is contrary to the plain language of the rule and its intent. A provider must demonstrate that the services it has provided are unusually costly and unusually extensive. Vista Hospital of Dallas has not demonstrated that the services they provided were, in fact, unusually costly and unusually extensive. Because of this, Vista Hospital of Dallas is not entitled to reimbursement under the Stop-Loss Exception."

**Response Submitted by:** Herb S. Harris, Harris & Harris Attorneys at Law

### ***SUMMARY OF FINDINGS***

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
September 22, 2006 through September 25, 2006	Inpatient Hospital Services	\$6,995.89	\$0.00

### ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.240, 31 *Texas Register* 3544, effective May 2, 2006, sets out the procedures for medical payments and denials.
2. 28 Texas Administrative Code §133.2, 31 *Texas Register* 3544, effective May 2, 2006, sets out the definition of final action.
3. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
4. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

The services in dispute were reduced/denied by the respondent with the following reason codes:

#### **Explanation of Benefits**

- 222 – Charge exceeds Fee Schedule allowance.
- 18 – Duplicate claim/service.
- 42 \_ Charges exceed our fee schedule or maximum allowable amount.
- 50 – These are non-covered services because this is not deemed a medical necessity by the payer.
- 97 – Payment included in the allowance for another service/procedure.
- ANSIW1 – Workers Compensation State Fee Schedule Adjustment.

*Dispute M4-07-3218 was originally decided on October 14, 2008 and subsequently appealed to a contested case hearing at the State Office of Administrative Hearings (SOAH) under case number 454-09-1171.M4. This dispute was then remanded to the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) pursuant to a February 16, 2009 SOAH order of remand. As a result of the remand order, the dispute was re-docketed at medical fee dispute resolution and is hereby reviewed*

#### **Issues**

1. Did the respondent provide sufficient explanation for denial of the disputed services?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?

5. Is the requestor entitled to additional reimbursement?

**Findings**

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each party was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The documentation filed to the division by the requestor and respondent to date is considered. Consistent with the Third Court of Appeals' November 13, 2008 opinion, and 28 Texas Administrative Code §134.401(c)(6), the division will address whether the requestor demonstrated that: audited charges **in this case** exceed \$40,000; the admission and disputed services **in this case** are unusually extensive; and that the admission and disputed services **in this case** are unusually costly.

1. The carrier denied services using the denial code ANSI50 – "These are non-covered services because this is not deemed a medical necessity by the payer." In accordance with Texas Administrative Code Section 133.301(a), which states in part, "The insurance carrier shall not retrospectively review the medical necessity of a medical bill for treatment(s) and/or service(s) for which the health care provider has obtained preauthorization under Chapter 134..." The health care provider submitted a copy of the preauthorization approval number 2611. The above denial reason is not supported. The disputed services will therefore be reviewed for payment in accordance with applicable Division rules and fee guidelines.
2. 28 Texas Administrative Code §133.240(a) and (e), 31 Texas Register 3544, effective May 2, 2006 and applicable to the dates of service, state, in pertinent part, that "(a) An insurance carrier shall take final action after conducting bill review on a complete medical bill..." and "(e) The insurance carrier shall send the explanation of benefits in the form and manner prescribed by the Division..." Furthermore, 28 Texas Administrative Code §133.2, 31 Texas Register 3544, states, in pertinent part "(4) Final action on a medical bill-- (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or (B) denying a charge on the medical bill."

The requestor in its position statement asserts that:

"The Carrier did not make a legal denial of reimbursement because Vista was not provided with a sufficient explanation or the proper denial reasons to justify the denial of reimbursement of the disputed charges. In addition, the Carrier applied the incorrect reimbursement methodology to Vista's charges."

Review of the submitted documentation finds that the explanation of benefits was issued using the division prescribed form TWCC 62 and noted payment exception codes of:

- 222 – Charge exceeds Fee Schedule allowance.
- 18 – Duplicate claim/service.
- 42 – Charges exceed our fee schedule or maximum allowable amount.
- 50 – These are non-covered services because this is not deemed a medical necessity by the payer.
- 97 – Payment included in the allowance for another service/procedure.
- ANSIW1 – Workers Compensation State Fee Schedule Adjustment.

These payment exception codes and descriptions support an explanation for the reduction of reimbursement based on former 28 Texas Administrative Code §134.401. These reasons support a reduction of the reimbursement amount from the requested stop-loss exception payment reimbursement methodology to the standard per diem methodology amount and provided sufficient explanation to allow the provider to understand the reason(s) for the insurance carrier's action(s) for the services in dispute. The division therefore concludes that the insurance carrier has met the requirements of applicable §133.240, and §133.2.

3. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill

review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$64,034.95. The division concludes that the total audited charges exceed \$40,000.

4. The requestor in its original position statement asserts that “...if the total audited charges for *the* entire admission are above \$40,000, the Carrier shall reimburse using the Stop-Loss Methodology in accordance with the plain language of the rule contained in § 134.401(c)(6)(A)(iii). The rule does not require a hospital to prove that services provided during the admission were unusually extensive or unusually costly to trigger the application of the Stop Loss Methodology. It is presumed that the services provided were unusually extensive or unusually costly when the \$40,000 stop-loss threshold is reached.” In its position statement, the requestor presupposes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 rendered judgment to the contrary. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services.” The requestor’s position that it was not required to prove that the services in disputes were unusually extensive is not supported. The requestor failed to discuss the particulars of the admission in dispute that may constitute unusually extensive services, therefore, the division finds that the requestor did not meet 28 TAC §134.401(c) (6).
5. In regards to whether the services were unusually costly, the requestor states “...The rule does not require Vista to prove that services provided during the admission were unusually extensive or unusually costly...” The third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor’s position that it was not required to prove that the services in disputes were unusually extensive is not supported. The requestor failed to discuss the particulars of the admission in dispute that may constitute unusually costly services, therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
6. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
  - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was three days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of three days results in an allowable amount of \$3,354.00. Reimbursement is not recommended as the table of disputed services indicates revenue code 110 is not in dispute.
  - 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed two units of Thrombin USP TOP at \$330.05/unit, for a total charge of \$660.10. The requestor did not submit documentation to support what the cost to the hospital was for Thrombin USP TOP. For that reason, reimbursement for these items cannot be recommended.
  - The division notes that 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bills finds that the following items were billed under revenue code 0278 and are therefore eligible for separate payment under §134.401(c)(4)(A) as follows:

Charge Code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
0002097	Copios Bone	Sponge, Copios BVF, 10 cc	1 at \$1,430.00	\$1,430.00	\$1,573.00

			ea		
			TOTAL ALLOWABLE \$1,573.00		

The division concludes that the total allowable for this admission is \$1,573.00. The respondent issued payment in the amount of \$41,030.31. Based upon the documentation submitted, no additional reimbursement can be recommended.

### **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to discuss and demonstrate that the disputed inpatient hospital admission involved unusually extensive, and unusually costly services. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

### **Authorized Signature**

Signature	Medical Fee Dispute Resolution Officer	10/10/12 Date
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### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**